

G. Anthony Long, Esq.
Law Office of G. Anthony Long
P. O. Box 504970.
San Jose, Saipan, MP 96950
Telephone No. (670) 235-4802
Facsimile No. (670) 235-4801

Attorney for Defendant Zheng

**IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS**

UNITED STATES OF AMERICA)	CRIMINAL ACTION NO. 05-0027
)	
Plaintiff)	
)	
v.)	
)	DEFENDANT ZHENG'S
ZHENG, MING YAN and LIU, CHANG)	PROPOSED JURY INSTRUCTIONS
DA)	
)	
Defendant)	
_____)	

Defendant Zheng Ming Yan submits her proposed jury instructions.

Law Office of G. Anthony Long

By:/s/ _____
G. Anthony Long

DEFENDANT'S JURY INSTRUCTION NO. _____

DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. You must not read into these instructions or into anything the court may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

NCJI 3.1

DEFENDANT'S JURY INSTRUCTION NO. _____

THE UNITED STATES AS A PARTY

You are to perform the duty of finding the facts without bias or prejudice as to any party. You are to perform your final duty in an attitude of complete fairness and impartiality.

The case is important to the government for the enforcement of criminal laws is a matter of prime concern to the community. Equally, it is important to each defendant who are each charged with serious crimes. The fact that prosecution is brought in the name of the United States of America entitles the prosecution to no greater consideration than that accorded to any other party to a litigation. All parties, whether government or individuals, stand as equals at the bar of justice.

Matthew & Bender, Modern Federal Jury Instructions ("MFJI") NO. 2-5

DEFENDANT'S JURY INSTRUCTION NO. _____

GOVERNMENT ALWAYS WINS REGARDLESS OF JURY VERDICT

The question before you can never be: Will the government win or lose the case. The government always wins when justice is done. Justice is achieved when you, the jury return your verdict, regardless of whether the verdict is guilty or not guilty.

derived from MFJI NO. 2-5 Comment.

DEFENDANT'S JURY INSTRUCTION NO. _____

**CHARGE AGAINST DEFENDANT NOT
EVIDENCE — PRESUMPTION OF
INNOCENCE — BURDEN OF PROOF**

The indictment is not evidence. The defendant has pleaded not guilty to the charge. The defendant is presumed to be innocent and does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charge beyond a reasonable doubt.

NCJI 3.2

DEFENDANT'S JURY INSTRUCTION NO. _____

EVIDENCE OF OTHER ACTS OF DEFENDANT OR ACTS AND STATEMENTS OF OTHERS

You are here only to determine whether the defendant is guilty or not guilty of the charge in the information. Your determination must be made only from the evidence in the case. The defendant is not on trial for any conduct or offense not charged in the information. You should consider evidence about the acts, statements, and intentions of others, or evidence about other acts of the defendant, only as they relate to this charge against this defendant.

NCJI 3.10

DEFENDANT'S JURY INSTRUCTION NO. _____

DEFENDANT'S DECISION NOT TO TESTIFY

A defendant in a criminal case has a constitutional right not to testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that the defendant did not testify.

NCJI 3.3

DEFENDANT'S JURY INSTRUCTION NO. _____

DEFENDANT'S DECISION TO TESTIFY

The defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

NCJI 3.4

DEFENDANT'S JURY INSTRUCTION NO. ____

RULING ON OBJECTIONS

There are rules of evidence which control what can be received into evidence. When a lawyer asked a question or offered an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer objected. If I overruled the objection, the question was answered or the exhibit received. If I sustain the objection, the question was not answered, and the exhibit was not received. Whenever I sustained an objection to a question, you must ignore the question and must not guess what the answer would have been.

Sometimes I may have ordered that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence which I told you to disregard.

NCJI 1.7

DEFENDANT'S JURY INSTRUCTION NO. _____

**SEPARATE CONSIDERATION OF MULTIPLE COUNTS—MULTIPLE
DEFENDANTS**

A separate crime is charged against one or more of the defendants in each count. The charges have been joined for trial. You must decide the case of each defendant on each crime charged against that defendant separately. Your verdict on any count as to any defendant should not control your verdict on any other count or as to any other defendant.

All of the instructions apply to each defendant and to each count unless a specific instruction states that it applies only to a specific defendant or count

NCIJ 3.14

DEFENDANT'S JURY INSTRUCTION NO. ____

CONSIDERATION OF EVIDENCE

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be -- that is entirely for you to decide.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

Some of you have taken notes during the trial. Such notes are only for the personal use of the person who took them.

NCJI NO. 7.02

DEFENDANT'S JURY INSTRUCTION NO. ____

WHAT IS EVIDENCE

The evidence from which you are to decide what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which have been received into evidence; and
- (3) any facts to which all the lawyers have stipulated.

NCJI 3.6

DEFENDANT'S JURY INSTRUCTION NO. ____

WHAT IS NOT EVIDENCE

In reaching your verdict you may consider only the testimony and exhibits received into evidence. Certain things are not evidence and you may not consider them in deciding what the facts are. I will list them for you:

1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements, and closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.
2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the question, the objection, or the court's ruling on it.
3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not evidence and must not be considered. In addition some testimony and exhibits have been received only for a limited purpose; where I have given a limiting instruction, you must follow it.
4. Anything you may have seen or heard when the court was not in session is not

DEFENDANT'S JURY INSTRUCTION NO. _____

evidence. You are to decide the case solely on the evidence received at the trial.

NCJI 3.7

DEFENDANT'S JURY INSTRUCTION NO. ____

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

NCJI 3.8

DEFENDANT'S JURY INSTRUCTION NO. ____

EVIDENCE: SOLELY CIRCUMSTANTIAL

To justify a conviction based solely on circumstantial evidence, the facts and circumstances must not only be entirely consistent with the theory of guilt, but must be inconsistent with any other rational theory or conclusion.

MCJI 1-O 17(a). *State v. Ryan*, 229 Mont. I, 744 P.2d 1242 (1987); *State v.*

Miller, 231 Mont. 497, 757 P.2d 1275, 1284 (1988).

DEFENDANT'S JURY INSTRUCTION NO. ____

CHARTS AND SUMMARIES IN EVIDENCE

Certain charts and summaries have been received into evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

NCJI 4.19

DEFENDANT'S JURY INSTRUCTION NO. _____

CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness' memory;
3. the witness' manner while testifying;
4. the witness' interest in the outcome of the case and any bias or prejudice;
5. whether other evidence contradicted the witness' testimony;
6. the reasonableness of the witness' testimony in light of all the evidence; and
7. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

NCJI 3.9

DEFENDANT'S JURY INSTRUCTION NO. ____

IMPEACHMENT EVIDENCE- WITNESS

You have heard evidence that certain witnesses gave or made prior statements which were inconsistent with testimony given during trial. You may consider this evidence, along with other pertinent evidence, in deciding whether or not to believe this witness and how much weight to give to the testimony of that witness.

NCJI NO. 4.08

DEFENDANT'S JURY INSTRUCTION NO. _____

CHARACTER OF WITNESS FOR TRUTHFULNESS

You have heard evidence of the character for truthfulness of [*name of witness*], a witness. You may consider this evidence along with other evidence in deciding whether or not to believe that witness' testimony and how much weight to give to it.

NCJI 4.7

DEFENDANT'S JURY INSTRUCTION NO. ____

EYEWITNESS IDENTIFICATION

In any criminal case, the government must prove beyond a reasonable doubt that the defendant was the perpetrator of the crime alleged.

You have heard testimony of eyewitness identification. In deciding how much weight to give to this testimony, you may take into account the various factors mentioned in these instructions concerning credibility of witnesses.

In addition to those factors, in evaluating eyewitness identification testimony, you may also take into account:

1. the capacity and opportunity of the eyewitness to observe the offender based upon the length of time for observation and the conditions at the time of observation;
2. whether the identification was the product of the eyewitness' own recollection or was the result of subsequent influence or suggestiveness;
3. any inconsistent identifications made by the eyewitness;
4. whether the witness had known or observed the offender at earlier times; and
5. the totality of circumstances surrounding the eyewitness' identification.

NCJI 4.14

DEFENDANT'S JURY INSTRUCTION NO. ____

WITNESS WILLFULLY FALSE

A witness, who is willfully false in one material part of his or her testimony, is to be distrusted in others. You may reject the whole testimony of a witness who willfully has testified falsely as to a material point, unless, from all the evidence, you believe the probability of truth favors his or her testimony in other particulars.

CALJIC NO. 2.21.2

DEFENDANT'S JURY INSTRUCTION NO. ____

OPINION TESTIMONY OF LAY WITNESS

In determining the weight to be given to an opinion expressed by any witness who did not testify as an expert witness, you should consider the person's credibility, the extent of the person's opportunity to perceive the matters upon which his opinion is based and the reasons, if any, given for it. You are not required to accept such an opinion but should give it the weight, if any, to which you find it entitled.

CALJIC NO. 2.81

DEFENDANT'S JURY INSTRUCTION NO. ____

OPINION EVIDENCE, EXPERT WITNESS

You have heard testimony from persons who, because of education or experience, are permitted to state opinions and the reasons for their opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

NCJI 4.17

DEFENDANT'S JURY INSTRUCTION NO. _____

JURY TO BE GUIDED BY OFFICIAL

ENGLISH TRANSLATION/INTERPRETATION

Languages other than English have been used during this trial.

The evidence you are to consider is only that provided through the official court interpreters. Although some of you may know the non-English language used, it is important that all jurors consider the same evidence. Therefore, you must base your decision on the evidence presented in the English interpretation. You must disregard any different meaning of the non-English words.

NCJI 3.20

DEFENDANT'S JURY INSTRUCTION NO. _____

ACCOMPLICES CALLED BY THE GOVERNMENT

You have heard witnesses who testified that they were actually involved in planning and carrying out the crime charged in the information. There has been a great deal said about these so-called accomplice witnesses in the summations of counsel and whether or not you should believe them.

The government argues, as it is permitted to do, that it must take the witnesses as it finds them. It argues that only people who themselves take part in criminal activity have the knowledge required to show criminal behavior by others.

For those very reasons, the law allows the use of accomplice testimony. Indeed, it is the law that the testimony of accomplices may be enough in itself for conviction, if the jury finds that the testimony establishes guilt beyond a reasonable doubt.

However, it is also the case that accomplice testimony is of such nature that it must be scrutinized with great care and viewed with particular caution when you decide how much of that testimony to believe.

I have given you some general considerations on credibility and I will not repeat them all here. Nor will I repeat all of the arguments made on both sides. However, let me say a few things that you may want to consider during your deliberations on the subject of accomplices.

You should ask yourselves whether these so-called accomplices would benefit more by lying, or by telling the truth. Was their testimony made up in any way because they believed or hoped that they would somehow receive favorable treatment by testifying falsely? Or did they

DEFENDANT'S JURY INSTRUCTION NO. _____

believe that their interests would be best served by testifying truthfully? If you believe that the witness was motivated by hopes of personal gain, was the motivation one which would cause him to lie, or was it one which would cause him to tell the truth? Did this motivation color his testimony?

In sum, you should look at all of the evidence in deciding what credence and what weight, if any, you will want to give to the accomplice witnesses.

MFJI NO. 7-5

DEFENDANT'S JURY INSTRUCTION NO. _____

TESTIMONY OF ACCOMPLICE

You have heard testimony from _____. An accomplice is one who voluntarily and intentionally joins with another person in committing a crime. You should consider such testimony with greater caution than that of an ordinary witness.

NCJI NO. 4.11

DEFENDANT'S JURY INSTRUCTION NO. _____

TESTIMONY UNDER GRANT OF IMMUNITY

You have heard testimony from _____ who have each received immunity. That testimony was given in exchange for a promise by the government that their testimony will not be used in any case against them.

In evaluating their testimony, you should consider whether that testimony may have been influenced by the government's promise of immunity given in exchange for it, and you should consider that testimony with greater caution than that of ordinary witnesses.

NCJI NO. 4.09

DEFENDANT'S JURY INSTRUCTION NO. _____

IMPEACHMENT EVIDENCE - PRIOR CONVICTION

You have heard evidence that _____ have been convicted of _____ . You may consider this evidence, along with other pertinent evidence, in deciding whether or not to believe those witnesses and how much weight to give to their testimony.

NCJI NO. 4.08

DEFENDANT'S JURY INSTRUCTION NO. _____

IMPEACHMENT EVIDENCE- WITNESS

You have heard evidence that certain witnesses gave or made prior statements which were inconsistent with testimony given during trial. You may consider this evidence, along with other pertinent evidence, in deciding whether or not to believe this witness and how much weight to give to the testimony of that witness.

NCJI NO. 4.08

DEFENDANT'S JURY INSTRUCTION NO. _____

TESTIMONY OF INFORMER

You have heard testimony that _____ have received favorable treatment from the government in connection with this case. You should examine their testimony with greater caution than that of ordinary witnesses. In evaluating that testimony, you should consider the extent to which it may have been influenced by the receipt of favorable treatment from the government.

NCJI NO. 4.10

DEFENDANT'S JURY INSTRUCTION NO. _____

WITNESS WHO HAS PLEADED GUILTY

The witnesses _____ have pleaded to _____. arising out of the same events for which defendant is on trial. The pleas are not evidence against Defendant and you may consider it only in determining their believability. You should consider their testimony with great caution, giving it the weight you feel it deserves.

NCJI NO. 4.12

DEFENDANT'S JURY INSTRUCTION NO. _____

WEIGHING CONFLICTING TESTIMONY

You are not required to decide any issue according to the testimony of a number of witnesses, which does not convince you, as against the testimony of a smaller number or other evidence, which is more convincing to you. The testimony of one witness worthy of belief is sufficient to prove any fact. This does not mean that you are free to disregard the testimony of any witness merely from caprice or prejudice, or from a desire to favor either side. It does mean that you must not decide anything by simply counting the number of witnesses who have testified on the opposing sides. The test is not the number of witnesses, but the convincing force of the evidence.

BAJI 2.01

DEFENDANT'S JURY INSTRUCTION NO. _____

STATEMENTS BY DEFENDANT

You have heard testimony that defendant made certain statements. It is for you to decide (1) whether Defendant made the statement and (2) if so, how much weight to give to it. In making those decisions, you should consider all of the evidence about the statement, including the circumstances under which it may have made it.

NCJI NO. 4.01

DEFENDANT'S JURY INSTRUCTION NO. _____

REASONABLE DOUBT - DEFINED

As I have said many times, the government has the burden of proving defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true. In criminal cases, the government's proof must be more powerful than that. It must be beyond a reasonable doubt.

A reasonable doubt is a doubt based upon reason and common sense, and may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. Proof beyond a reasonable doubt is proof that leaves you firmly convinced that defendant is guilty. Or doubt which causes you to hesitate to act.

If after a careful and impartial consideration with your fellow jurors of all the evidence, you are not firmly convinced beyond a reasonable doubt that defendant is guilty, it is your duty to find defendant not guilty. On the other hand, if after a careful and impartial consideration with your fellow jurors of all the evidence you are firmly convinced beyond a reasonable doubt that Defendant is guilty, it is your duty to find her guilty.

**NCJI NO. 3.03 modified by MFJI Pattern Instructions,
General Criminal Instruction No. 21**

DEFENDANT'S JURY INSTRUCTION NO. _____

ACTIVITIES NOT CHARGED

The defendant is on trial only for the offense charged in the information, not for any other activities.

NCJI 3.11

DEFENDANT'S JURY INSTRUCTION NO. _____

CHARGES AGAINST DEFENDANT

The indictment charges defendant with one count of conspiracy, two counts of sex trafficking, one count of foreign transportation for prostitution, one count of foreign transportation of persons pursuant to a fraudulent scheme.

DEFENDANT'S JURY INSTRUCTION NO. _____

CONSPIRACY— ELEMENTS

Count one of the second superseding indictment charges each defendant conspiracy. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, beginning on or about August, 2004 and ending on or about August, 2005, there was an agreement among Zheng Ming Yan, Liu, Chang Da and at least one other person to commit sex trafficking in violation of 18 U.S.C. § 1591(a), to transport persons in interstate and foreign commerce of the United States for prostitution purposes in violation of 18 U.S.C. § 2421 and to fraudulently induce persons to travel in interstate or foreign commerce of the United States 18 U.S.C. § 2314.

Second, the defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it and

Third, one of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy, with all of you agreeing on a particular overt act that you find was committed.

I shall discuss with you briefly the law relating to each of these elements.

DEFENDANT'S JURY INSTRUCTION NO. _____

A conspiracy is a kind of criminal partnership—an agreement of two or more persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful; it does not matter whether the crime agreed upon was committed.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. You must find that there was a plan to commit the crime alleged in the indictment as an object of the conspiracy with each of you agreeing as to the persons with whom defendant conspired.

One becomes a member of a conspiracy by willfully participating in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy, even though the person does not have full knowledge of all the details of the conspiracy. Furthermore, one who willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand, one who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person does not become a conspirator merely by associating with one or more persons who are conspirators, nor merely by knowing that a conspiracy exists.

NCJI 8.16 modified

DEFENDANT'S JURY INSTRUCTION NO. _____

**KNOWLEDGE OR APPROVAL OF A CONSPIRACY IS INSUFFICIENT TO
CONVICT**

A person does not become a member of a conspiracy merely by associating with one or more persons who are conspirators, knowing of the existence of the conspiracy, being present where a crime takes place or is discussed, or having knowledge of criminal conduct or approving of the conspiracy.

United States v. Croft 124 F.3d 1109, 1123 (9th Cir. 1997)

DEFENDANT'S JURY INSTRUCTION NO. _____

MULTIPLE CONSPIRACIES

You must decide whether the conspiracy charged in the indictment existed, and, if it did, who at least some of its members were. If you find that the conspiracy charged did not exist, then you must return a not guilty verdict, even though you may find that some other conspiracy existed. Similarly, if you find that the defendant was not a member of the charged conspiracy, then you must find that defendant not guilty, even though that defendant may have been a member of some other conspiracy.

NCJI 8.17

DEFENDANT'S JURY INSTRUCTION NO. _____

WITHDRAWAL FROM CONSPIRACY

Once a person becomes a member of a conspiracy, that person remains a member until that person withdraws from it. One may withdraw by doing acts which are inconsistent with the purpose of the conspiracy and by making reasonable efforts to tell the co-conspirators about those acts. You may consider any definite, positive step that shows that the conspirator is no longer a member of the conspiracy to be evidence of withdrawal.

The government has the burden of proving that the defendant did not withdraw from the conspiracy before the overt act—on which you all agreed—was committed by some member of the conspiracy.

NCJI 8.19

DEFENDANT'S JURY INSTRUCTION NO. _____

NCJI 8.20

CONSPIRACY— SEARS CHARGE

Before being convicted of conspiracy, an individual must conspire with at least one co-conspirator. There can be no conspiracy when the only person with whom the defendant allegedly conspired was a government agent or informer who secretly intended to frustrate the conspiracy.

NCJI 8.21

DEFENDANT'S JURY INSTRUCTION NO. _____

SEX TRAFFICKING

Counts two and three of the second superseding indictment charges each defendant with sex trafficking in violation of 18 U.S.C. § 1591(a). In order for either defendant to be found guilty of count two, the government must prove each of the following elements beyond a reasonable doubt:

- (1) the defendant knowingly and willingly recruited, enticed, harbored, transported Lian Wei
- (2) the defendant benefitted financially and by receiving a thing of value from participating in a venture,
- (3) the acts engaged in by the venture were in or affecting interstate commerce,
- (4) the defendant knew that fraud, force or coercion would be used to cause Lian Wei to engage in a commercial sex act.

In order for either defendant to be found guilty of count three, the government must prove each of the following elements beyond a reasonable doubt:

- (1) the defendant knowingly and willingly recruited, enticed, harbored, transported Chi, Ximei
- (2) the defendant benefitted financially and by receiving a thing of value from participating in a venture,
- (3) the acts engaged in by the venture were in or affecting interstate commerce,
- (4) the defendant knew that fraud, force or coercion would be used to cause Chi, Ximei to engage in a commercial sex act.

DEFENDANT'S JURY INSTRUCTION NO. _____

The following definitions apply with respect to counts two and three:

The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.

The term "coercion" means (a) threats of serious harm to or physical restraint against any person; (b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (c) the abuse or threatened abuse of law or the legal process.

The term "venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

DEFENDANT'S JURY INSTRUCTION NO. _____

FOREIGN TRANSPORTATION FOR PROSTITUTION

(18 U.S.C. § 2421.2)

Count 4 of second superseding indictment charges each defendant transporting a person with intent that the person engage in prostitution in violation of Section 2421 of Title 18 of the United States Code. In order for either defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly transported Lian Wei or Chi, Ximei in interstate and foreign commerce and in any Territory and Possession of the United States; and

Second, the defendant transported Lian Wei or Chi, Ximei with the intent that such person engage in prostitution.

For purposes of Count 4,

Prostitution means to engage in sexual conduct for money or a fee but does not include sexual conduct engaged in as part of any stage performance, play or other entertainment open to the public.

“Sexual conduct” means any of the following:

(1) “Sexual intercourse” means sexual intercourse in its ordinary meaning and it means:

DEFENDANT'S JURY INSTRUCTION NO. _____

(i) Any intrusion of penetration, however slight, of any part of another person's body into the genital opening of another person: emission is not required, or

(ii) Any penetration of the vagina or anus, however slight by an object, when committed on one person by another, whether such persons are of the same of opposite sex, except when such penetration is accomplished by a health professional with the consent of a patient for medically recognized treatment of, or diagnostic purposes for that patient; or

(iii) An act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

NCJI 8.160 & 6 CMC §§ 1341(a) & (d)

DEFENDANT'S JURY INSTRUCTION NO. _____

**FOREIGN TRANSPORTATION OF PERSONS IN EXECUTION OF FRAUDULENT
SCHEME**

Count 5 of second superseding indictment charges each defendant transporting a person with intent that the person engage in prostitution in violation of Section 2421 of Title 18 of the United States Code. In order for either defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant devised a scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises,

Second, the scheme or artifice transports or causes to be transported, or induced Chi Xiumei and Lian Wei to travel in, or to be transported in interstate or foreign commerce; and

Third, the travel was in the execution or concealment of a scheme or artifice to defraud Chi Xiumei and Lian Wei each of money or property having a value of \$5,000 or more.

DEFENDANT'S JURY INSTRUCTION NO. _____

**UNITED STATES CONSTITUTIONAL PROVISIONS NOT APPLICABLE IN THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

The portions of the United States Constitution applicable in the Commonwealth are governed by the the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America ("Covenant").

Pursuant to the Covenant, the interstate or foreign commerce clause of the United States Constitution to the CNMI are not extended to the Commonwealth.

Pursuant to the Covenant, the territorial clause of the United States Constitution to the Commonwealth.

Pursuant to the Covenant, the United States immigration laws do not apply and do not control the entry of persons into the Commonwealth.

DEFENDANT'S JURY INSTRUCTION NO. _____

WILLFULNESS – DEFINED

Wilfulness requires that an act be done knowingly and intentionally, not through ignorance, mistake or accident.

United States v. Morales, 108 F.3d 1031, 1036 (9th Cir. 1997). See **NCJI 5.5**

DEFENDANT'S JURY INSTRUCTION NO. _____

KNOWINGLY — DEFINED

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

NCJI 5.6

DEFENDANT'S JURY INSTRUCTION NO. _____

INTENT TO DEFRAUD—DEFINED

An intent to defraud is an intent to deceive or cheat.

NCJI 3.17

DEFENDANT'S JURY INSTRUCTION NO. _____

SPECIFIC INTENT DEFINED

The crimes charged in counts one through 5 require proof of specific intent before defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent the prosecution must prove that the defendant knowingly conspired to defraud the Environmental Protection Agency. Such intent may be determined from all the facts and circumstances surrounding the case.

NCJI No. 5.4 Comment (modified)

DEFENDANT'S JURY INSTRUCTION NO. _____

MERE PRESENCE

Mere presence at the scene of a crime or mere knowledge that a crime is being committed is not sufficient to establish that the defendant committed the crime of conspiracy to distribute and possess with intent to distribute a controlled substance commonly known as "ice", unless you find that the defendant was a participant and not merely a knowing spectator. The defendant's presence may be considered by the jury along with other evidence in the case.

NCJI 6.9

DEFENDANT'S JURY INSTRUCTION NO. _____

DUTY TO DELIBERATE

When you begin your deliberations, you should elect one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

NCJI 7.1

DEFENDANT'S JURY INSTRUCTION NO. _____

CONSIDERATION OF EVIDENCE

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that I have said or done is intended to suggest what your verdict should be, that is entirely for you to decide.

NCJI 7.2

DEFENDANT'S JURY INSTRUCTION NO. _____

USE OF NOTES

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by the notes.

NCJI 7.3

DEFENDANT'S JURY INSTRUCTION NO. _____

VERDICT FORM

A verdict form has been prepared for you. [Any explanation of the verdict form may be given at this time.] After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it and advise the bailiff that you are ready to return to the courtroom.

NCJI 7.5

DEFENDANT'S JURY INSTRUCTION NO. _____

COMMUNICATION WITH COURT

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing, or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including me—how the jury stands, numerically or otherwise, on the question of the guilt of the defendant, until after you have reached a unanimous verdict or have been discharged.

NCJI 7.6